



**The Comptroller General  
of the United States**

Washington, D.C. 20548

coles

## **Decision**

**Matter of:** Soltec Corporation--Request for Costs

**File:** B-234716.3

**Date:** June 8, 1989

---

### **DIGEST**

There is no basis for an award of bid preparation and protest costs where the protester withdrew initial protest and subsequent protest was dismissed as academic, since a prerequisite to the award of costs under the Competition in Contracting Act is a decision on the merits of a protest.

---

### **DECISION**

Soltec Corporation requests recovery of its bid preparation and protest costs as a result of the cancellation of invitation for bids (IFB) No. F08650-89-B-A013, issued by the Air Force for the procurement of three oscillograph recorders and associated equipment. We deny the claim for costs.

The IFB was issued January 17, 1989, and bid opening was held on February 14. Prior to the technical evaluation of the bids received, Soltec first protested the Air Force's proposed award of a contract to Western Graphtec, the apparent low bidder, on the basis that the equipment offered by Western Graphtec failed to comply with the solicitation requirements; however, Soltec withdrew this protest after the Air Force's initial technical review revealed that Western Graphtec's bid was technically unacceptable. Soltec then filed another protest on March 28, alleging that the Air Force had allowed Western Graphtec to modify its bid, thus removing the defect which had caused its bid to be found unacceptable. The Air Force subsequently canceled the IFB, finding that the specifications did not accurately reflect its minimum needs. We then dismissed Soltec's second protest on May 3, because cancellation of the IFB rendered the protest academic.

045693/138852



Soltec now contends that since it no longer has any possibility of being awarded a contract under the canceled IFB, and will not compete under the new IFB because it does not offer a product meeting the revised specifications, it is entitled to its bid preparation and protest costs. We disagree.

Our authority to allow recovery of the costs claimed by Soltec is predicated upon a determination by our Office that the solicitation, proposed award or award of a contract does not comply with statute or regulation. 31 U.S.C.

\$ 3554(c)(1) (Supp. IV 1986); Teknion, Inc.--Claim for Protest Costs, B-230171.22 et al., Sept. 6, 1988, 88-2 CPD ¶ 213. A decision on the merits of a protest is an essential condition to a declaration that the protester is entitled to the award of costs. Brownell & Co., Inc.--Request for Reconsideration, B-225784.4, Aug. 20, 1987, 87-2 CPD ¶ 182. Here, we did not make such a determination with respect to either protest, since Soltec's first protest was withdrawn<sup>1/</sup> and its second protest was dismissed as academic; therefore, we have no basis for awarding costs to Soltec. See Sonic, Inc., B-225462.2, May 21, 1987, 87-1 CPD ¶ 531.

The request for costs is denied.

  
James F. Hinchman  
General Counsel

---

<sup>1/</sup> While Soltec withdrew its initial protest based on the agency's representation that it would receive an award, we fail to see how Soltec suffered any detriment as a result since we would have dismissed the protest as academic once the IFB had been canceled.